

LAW OFFICE OF  
**GARDNER FULTON & WAUGH P.L.L.C.**  
A PROFESSIONAL LIMITED LIABILITY COMPANY

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OF COUNSEL

EVERETT J. MARDER\*  
OF COUNSEL

\*ALSO ADMITTED IN VT  
\*ALSO ADMITTED IN VT AND MA

September 22, 2005

Michael Sclafani  
Clerk  
NHDES Water Council  
PO Box 95  
29 Hazen Drive  
Concord, NH 03302-0095

*Sent Via Federal Express*

05- 16 WC

**RECEIVED**

SEP 23 2005

Re: Pollard Realty Trust v. New Hampshire Environmental Services  
Docket No.

Dear Mr. Sclafani:

Enclosed please find my Appearance as counsel for the Pollard Realty Trust and Appeal of Decision dated August 25, 2005 in the above-referenced matter.

Please let me know if anything further is required.

Sincerely,

  
COPY

DRP/blj

Enclosure(s)

*(Sent Via First Class Mail)*

cc: Pollard Realty Trust  
Harry T. Stewart, Director, NHDES Water Division  
Michael P. Nolin, Commissioner, NHDES  
Hebron Board of Selectmen  
Hebron Municipal Clerk  
Hebron Conservation Commission  
Alan M. Barnard, L.L.S.

RECEIVED

SEP 23 2005

STATE OF NEW HAMPSHIRE

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

Docket No.

05-16 WC

APPEARANCE

Pollard Realty Trust v. N.H. Department of Environmental Services  
OF: 218 Little River Road OF: 29 Hazen Drive, PO Box 95  
Cotuit, MA 02635 Concord, NH 03302-0095

Please enter my appearance as:

counsel for: Pollard Realty Trust

I hereby certify that duplicates of this Appearance were mailed by first class mail to:

Michael P. Nolin  
Commissioner  
NHDES  
PO Box 95  
29 Hazen Drive  
Concord, NH 03302-0095

Harry T. Steward  
Director  
NHDES Water Division  
PO Box 95  
29 Hazen Drive  
Concord, NH 03302-0095

Board of Selectmen  
Town of Hebron  
PO Box 188  
7 School Street  
Hebron, NH 03241

Tracey Steenberger  
Clerk  
Town of Hebron  
PO Box 188  
7 School Street  
Hebron, NH 03241

Conservation Commission  
Town of Hebron  
PO Box 188  
7 School Street  
Hebron, NH 03241

on September 22, 2005

Signed: David R. Putnam, Esq.

Address: Gardner Fulton & Waugh P.L.L.C.  
78 Bank Street, Lebanon, NH 03766-1727  
Telephone: (603) 448-2221

STATE OF NEW HAMPSHIRE

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

Docket No. **05-16 WC**  
(DES File #2005-1394)

Pollard Realty Trust

**RECEIVED**

v.

**SEP 23 2005**

Department of Environmental Services

**APPEAL OF POLLARD REALTY TRUST FROM DES DENIAL OF RSA 483-B:11(II)**  
**WAIVER**

Pollard Realty Trust ("Appellant"), by and through it's attorneys, Gardner Fulton & Waugh PLLC, pursuant to RSA 21-O:7(IV) and RSA 21-O:14, hereby appeals to the Water Council from the decision of the NHDES Wetlands Bureau denying its application for a waiver under the Shoreland Protection Act, RSA Chapter 483-B. Pursuant to Administrative Rule Env-WC 203.03(b)(1-4), Appellant states as follows:


- (1) Appellant seeks a waiver from the fifty-foot setback requirement of RSA 483-B:9(II)(b), as authorized by RSA 483-B:11(II).
- (2) Appellant is the party seeking relief: Pollard Realty Trust, 218 Little River Road, Cotuit, MA 02635.
- (3) The facts upon which the Council is expected to rely in granting relief are those underlying Appellant's application for a waiver, including Appellant's proposal to significantly change the location of its existing structure in order to move it farther from Newfound Lake and its proposal to construct a new, state-approved septic system, both of which would significantly improve resource protection.
- (4) A copy of the decision being appealed is attached. The decision is dated August 25, 2005, but was received by Appellant on September 15, 2005 in an envelope postmarked September 9, 2005. An e-mail to Appellant's surveyor from DES staff on September 14, 2005 states that the Department rejected a staff recommendation for approval on September 9, 2005. The decision ignores facts underlying Appellant's application, fails to provide any substantial analysis of Appellant's proposal or the governing statute, and

further makes erroneous reference to RSA 149-M and RSA 21-O:9, which govern waste management and the Waste Management Council.

Appellant intends to submit legal arguments and evidence including photographs, plans and sworn expert and lay testimony in support of its appeal at a later date. *See* Administrative Rule Env-WC 203.03(c).

*Dated* this 22<sup>nd</sup> day of September 2005.

Respectfully Submitted  
**Pollard Realty Trust**  
By its attorney,

  
GARDNER FULTON & WAUGH P.L.L.C.  
78 Bank Street,  
Lebanon, NH 03766  
(603) 448-2221

*Certificate of Service*

I hereby certify that on this 22nd day of September 2005, a copy of the foregoing Appeal of Pollard Realty Trust From DES Denial of RSA 283-B:11(II) Waiver has been mailed via first class mail, postage prepaid, to Michael P. Nolin, Commissioner, NHDES, Harry T. Steward, Director, NHDES Water Division, Hebron Conservation Commission, Hebron Board of Selectmen, Hebron Municipal Clerk.

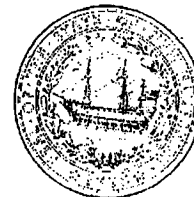
  
David R. Putnam



The State of New Hampshire  
*Department of Environmental Services*

Michael P. Nolin  
Commissioner

August 25, 2005



Pollard Realty Trust  
218 Little River Road  
Cotuit, MA 02635

RE: File #2005-1394 - Pollard Realty Trust - Hebron  
Tax Map/Lot # 19A / 14

Dear Mr. Pollard:

The Department of Environmental Services (DES) Wetlands Bureau has completed its review of your application to rebuild a nonconforming primary structure and has determined that the proposed project to reconstruct within the 50 ft setback to the reference line does not comply with the Comprehensive Shoreland Protection Act. The application has therefore been denied.

Findings of Fact:

1. On June 21, 2005, the Department received a proposal for property identified as Hebron Tax Map 19A, Lot 14 (the "Property"), to rebuild a nonconforming primary structure within the 50 ft primary building setback to the reference line.
2. The applicants "more nearly conforming" proposal was to have a net reduction of 945 sq ft within the 50 ft setback to the reference line by moving the structure back from 25 ft to 35 ft from the reference line.
3. The Property consists of 0.520 acre parcel.
4. A proposed newly constructed home in accordance with plans submitted June 21, 2005 could be constructed completely behind the required 50 ft setback.

Standards for Approval:

6. In accordance with RSA 483-B:9, Minimum Shoreland Protection Standards, II, "Primary structures shall be set back behind the primary building line which is 50 feet from the reference line."
7. In accordance with RSA 483-B:3, Consistency Required, "State and local permits shall be issued only when consistent with the policies of this chapter."
8. In accordance with RSA 483-B:11, II, "When reviewing requests for the redevelopment of sites...the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to public waters."
9. In accordance with RSA 483-B:11, II, "More nearly conforming means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection."

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964


DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

Ruling in Support of the Decision:

10. The issuance of a waiver of the primary building line on a site that could support conforming structures would not be consistent with the intent of RSA 483-B.
11. In accordance with RSA 483-B:3, the request for a waiver of RSA 483-B:9 is denied.

You are hereby informed that the appeal of this decision is to the New Hampshire Water Council. Appeal must be made within 30 days of the date of this letter, in accordance with RSA 149-M, RSA 21-O:9 and RSA-O:14. Filing of the appeal shall be made by certified mail to the chairperson of the council, with a copy to the Department, and shall set forth fully every ground upon which it is claimed that the Department's decision is unlawful or unreasonable.

Sincerely,

  
Michael J. Pollard  
Commissioner  
NHDES

**COPY**

cc: Hebron Conservation Commission  
Hebron Board of Selectmen  
Hebron Municipal Clerk  
Barnard Survey Association Inc. c/o